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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-106

C. E. BRADSHAW, SR.
Petitioner

vs.

VIC THOMPSON, et al.
Respondents

On Petition for the Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION ON BEHALF OF THE RESPONDENT, S. W. BEECH, JR.

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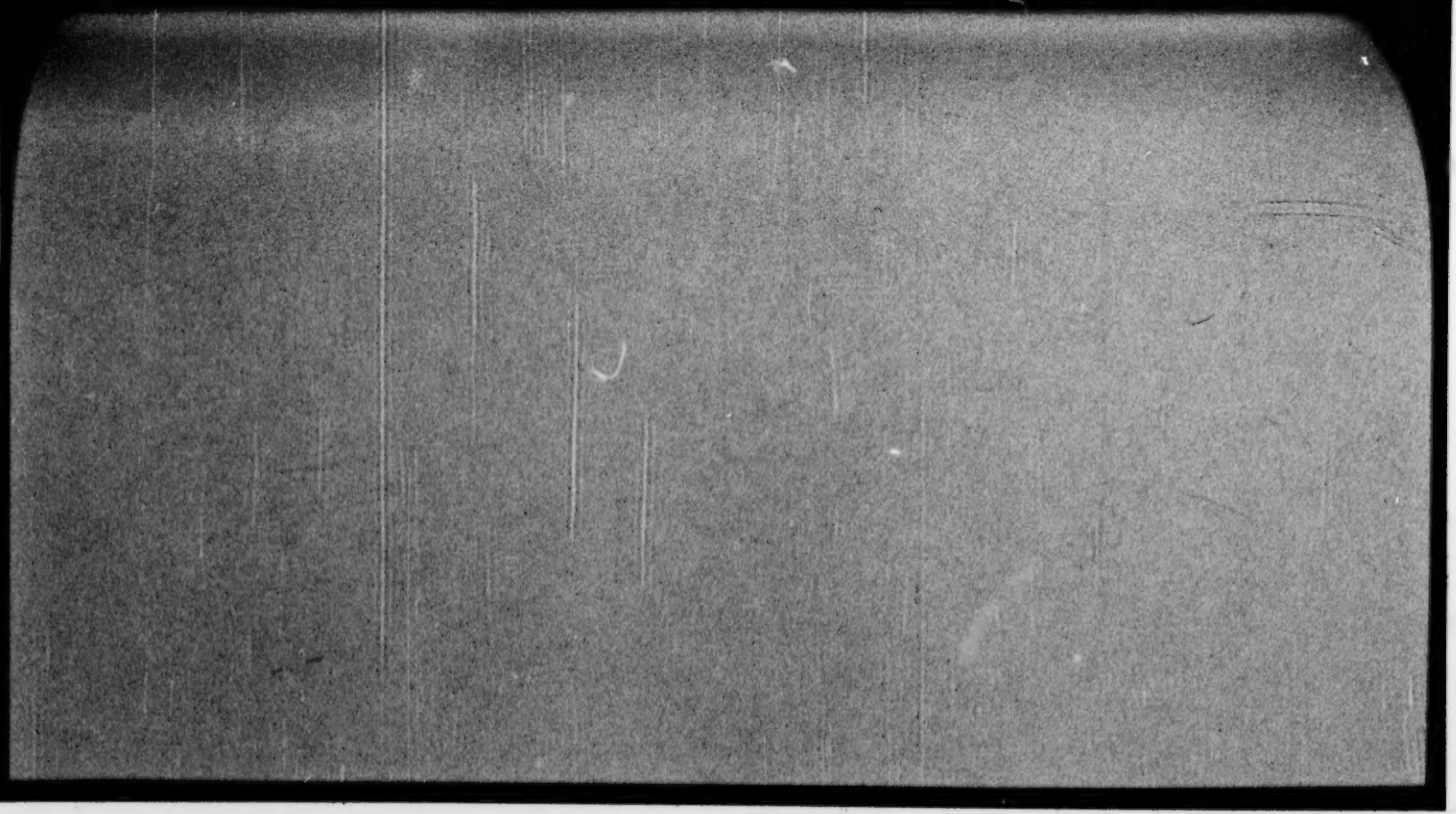

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OPINION BELOW

The opinion of the Court of Appeals is now reported at 454 F. 2d 75.

QUESTIONS PRESENTED FOR REVIEW

This Respondent, S. W. Beech, Jr., one of the Defendants below, is not involved in the controversy posed by Questions I and III in the Petition.

The Petitioner was not required or compelled to stipulate to any facts advanced by Mr. Beech that Petitioner was unwilling to stipulate.

Before the case was submitted to the Jury the District Court directed a verdict in favor of Mr. Beech and the question of his liability to the Petitioner was never submitted to the Jury.

Question No. II as posed in the Petition relates to Mr. Beech and only to Mr. Beech.

STATEMENT OF THE CASE

Jurisdiction of the District Court was founded upon diversity of citizenship and amount in controversy. The substantive law of the State of Tennessee governed.

A statement of the essential facts is contained in the Opinion of the Court of Appeals, reported at 454 F. 2d. 75. (The reported opinion of the Court of Appeals contains a typographical error at 454 F. 2d. 80, in the quotation from the catalogue published by Murray Farm. The word rendered "Cosigners," should be "Consignors").

ARGUMENT

The Petition for Certiorari as it relates to Mr. Beech:

1. Does not present any question under the Constitution of the United States.

2. Does not present any question under any statute of the United States.

3. Does not present a case where a Court of Appeals has rendered a decision in conflict with the decision of another Court of Appeals on the same matter.

4. Does not present a case where a Court of Appeals had decided an important State or territorial question in a way in conflict with applicable State or territorial law.

This case does not call for a construction of Rule 37 (c), Federal Rules of Civil Procedure. The question is:

"II. May the District Court properly tax all costs and Attorneys' fees pursuant to Rule 37 (c), Federal Rules of Civil Procedure *when the request for admission involved is not dispositive of all issues being tried?*" Emphasis supplied.

The United States District Court for the Eastern District of Tennessee and the United States Court of Appeals for the Sixth Circuit have both held, as a matter of substantive State law, that the Request for Admission involved was dispositive of all issues being tried between Mr. Bradshaw and Mr. Beech. The Petition for Certiorari cites no authority to the contrary.

At page 8 of the Petition the Plaintiff implies a lack of information and a demonstration of good faith upon subsequently obtaining such information. This implication is without support in pleading or proof.

The real question attempted to be presented by the Petition for Certiorari involves the determination of a question of State, rather than Federal law, and the Petition does not complain of the determination made on that question of State law by the lower Courts.

CONCLUSION

For the reasons stated, Certiorari should be denied.

Respectfully submitted,

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